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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,716	02/10/2000	Kazuichi Ooe	1046.1209/JDH	4289
21171	7590	02/21/2007	EXAMINER	
STAAS & HALSEY LLP			TSEGAYE, SABA	
SUITE 700			ART UNIT	PAPER NUMBER
1201 NEW YORK AVENUE, N.W.			2616	
WASHINGTON, DC 20005				
MAIL DATE		DELIVERY MODE		
02/21/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	09/501,716	OOE, KAZUCHI
	Examiner	Art Unit
	Saba Tsegaye	2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires 4 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) They raise the issue of new matter (see NOTE below);
 - (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 10/30/06

13. Other: _____.

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Continuation of 11, does NOT place the application in condition for allowance because:

Applicant argues that Reynolds fails to disclose “*a plurality of communication conditions comprising a version of an operating system of the communication devices,*” as claimed in claim 1. Examiner respectfully disagrees. Reynolds discloses that a decision function is used to select the communication mode for performing a particular distribution operation. The decision function uses one or more “parameters” to select the communication mode. One type of parameter is a “**hardware parameters of a multimode computer system**”. An example of a hardware parameter would be “**execution speed**” of the processor” or “**memory move**” speed of the processor. Furthermore, as known, difficulties arise when a transmitter to send a data packet to receivers using a different version of an operating system. It is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers.

Applicant argues that Reynolds discloses execution a network speed test in order to check hardware performance. *Reynolds does not disclose executing a network speed test between all nodes*. This argument is not persuasive because Reynolds clearly discloses that “communication mode” is performed between pluralities of nodes (see fig. 1, column 4, lines 1-29; column 5, lines 11-46). Applicant, further, argues that “performing a plurality of operations” is not the comparable to “measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions. Examiner respectfully disagrees. Reynolds clearly discloses, in fig. 4, step 409 “compute time requirements.” Inquiry is made regarding whether there is a significant difference between the times required for executing of two modes (column 8, lines 31-44).